

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CAINE PELZER,)	
	Plaintiff,)
)	C.A. No. 20-74 Erie
)	
v.)	District Judge Susan Paradise Baxter
)	Magistrate Judge Keith A. Pesto
PENNSYLVANIA DEPARTMENT)	
OF CORRECTIONS, et al.,)	
	Defendants.)

MEMORANDUM ORDER

This action was commenced by Plaintiff's filing of a *pro se* civil rights complaint pursuant to 42 U.S.C. § 1983, along with a subsequent motion to proceed *in forma pauperis* [ECF No. 3], which has since been denied [ECF No. 6]. This matter was referred to United States Magistrate Judge Keith A. Pesto for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates.

On May 11, 2020, Magistrate Judge Pesto issued a report and recommendation ("R&R") recommending that this action be dismissed under Rule 42(a)(3) of the Federal Rules of Civil Procedure because it is virtually identical to Plaintiff's case pending at 1:20-cv-51 SPB-KAP. [ECF No. 6]. This matter has since been assigned to the undersigned as presiding judge. Objections to the R&R were filed by Plaintiff on May 28, 2020, in which Plaintiff asserts that he only filed one complaint, which was docketed at 1:20-cv-51, and "never filed an identical copy of the pending matter...." (ECF No. 10 at p. 2). Instead, Plaintiff notes that "this appears to be a clerical error on behalf of the clerk of court because [he] did not file a second complaint in the

Western District of Pennsylvania.” (Id. at p. 3), Thus, he objects to the R&R to the extent it characterizes the filing of the duplicate complaint as an act of “gamesmanship on behalf of the Plaintiff.” (Id. at p. 2). Plaintiff adds that “If the Court decides that this is a clerical error then it would make sense that the duplicate case be dismissed as such....” (Id.).

After de novo review of the complaint, together with the report and recommendation, it appears that the present action was filed erroneously by the Clerk of Courts through no fault of the Plaintiff and should be dismissed accordingly. Thus, the following order is entered:

AND NOW, this 30th day of May, 2020;

IT IS HEREBY ORDERED that the report and recommendation of Magistrate Judge Pesto, issued May 11, 2020 [ECF No. 6], is adopted as the opinion of the Court insofar as it recommends dismissal of this case as duplicative, and this case is DISMISSED under Rule 42(a)(3) of the Federal Rules of Civil Procedure.

The Clerk is directed to mark this case CLOSED.



SUSAN PARADISE BAXTER
United States District Judge

cc: Keith A. Pesto
 U.S. Magistrate Judge

 all parties of record